

## § 169a.1

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AUTHORITY: 5 U.S.C. 301 and 552.

SOURCE: 50 FR 40805, Oct. 7, 1985, unless otherwise noted.

### Subpart A—General

#### § 169a.1 Purpose.

This part:

(a) Reissues DoD Instruction 4100.33<sup>1</sup> to update policy, procedures, and responsibilities required by DoD Directive 4100.15<sup>2</sup> and OMB Circular A-76<sup>3</sup> for use by the Department of Defense (DoD) to determine whether needed commercial activities (CAs) should be accomplished by DoD personnel or by contract with a commercial source.

(b) Cancels DoD 4100.33-H,<sup>4</sup> “DoD In-House vs. Contract Commercial and Industrial Activities Cost Comparison Handbook.”

#### § 169a.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Defense Agencies and DoD Field Activities (hereafter referred to collectively as the “DoD Components”).

(b) Contains DoD procedures for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

<sup>2</sup>See footnote 1 to § 169a.1(a).

<sup>3</sup>Copies may be obtained if needed, from the Office of Management and Budget, Executive Office Building, Washington, DC 20503.

<sup>4</sup>See footnote 1 to § 169a.1(a).

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions are defined in § 169a.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in appendix A to this part.

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish employer-employee relations between the Department of Defense and contractor employees as described in the Federal Acquisition Regulation (FAR), 48 CFR 37.104.

(k) Does not establish and shall not be construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part except as specifically set forth in § 169a.15(d).

[57 FR 29207, July 1, 1992]

#### § 169a.3 Definitions.

*Commercial activity review.* The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

*Commercial source.* A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or